IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1661 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE BANK OF SAURASHTRA

Versus

RAJKOT MUNICIPAL CORPORATION

Appearance:

MR SANDEEP N BHATT for Petitioner

MR AK CLERK for Respondent No. 1

SERVED BY AFFIX.-(R) for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/01/2001

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing and setting aside the public auction held by the respondent no. 1 on 9-3-1999 for the property situated at Alka Bungalow with land admeasuring 654 sq. yrds. on the land of Plot No. 4 Bhaktinagar

Society, Rajkot and for a direction to the effect that the sale procedure started by recovery officer, Debt Recovery Tribunal in pursuant to the Recovery Certificate be completed and on realization of the amount the respondent Rajkot Municipal Corporation will get the amount due and payable towards the property tax alternatively for a direction to the respondent no. 1 Corporation not to sell the property mentioned the above not below upset price of Rs.51,50,000/-and if it is sold over at Rs.51,50,000/- in public auction, the remaining amount after deduction of the property tax must be paid to the petitioner towards its legal dues.

2. The recovery certificate has been issued for Rs.44,54,702-69 ps. together with interest at the rate of 18% p.a. till its realization by the Debt Recovery Tribunal. The property could not be sold in the public auction held on 1-3-1999 and 14-4-1999. Meanwhile, the respondent no. 1 intimated to the petitioner - Bank that the public auction will be held by the respondent no. 1 for recovery of property tax of Rs.2,92,041/- with interest and requested the petitioner Bank not to hold public auction in respect of the property in question.

3. Learned counsel for the petitioner contended that the petitioner alone has right to hold public auction by virtue of the provisions of Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides, as under :

"34 - Act to have overriding effect :-

(1) Save as provided in sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 , the State Financial Corporations Act, 1951 , the Unit Trust of India Act, 1963, the Industrial Reconstructions Bank of India Act, 1984 and Sick Industrial Companies

Act, 1985.

4. On the contrary, the learned counsel for the respondent no. 1 Corporation contended that the respondent no. 1 has first charge for the property tax pursuant to the provisions of Section 148 of the Bombay Provincial Municipal Act, 1949. Section 141 and 141-A of the said Act are reproduced, as under "

"141- Property taxes to be a first charge on premises on which they are assessed.

(1) Property-taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the (State) Government thereupon, be a first charge, in the case of any building or land held immediately from (Government), upon the interest in such building or land of the person liable for such taxes and upon the movable property, if any, found within or upon such building or land and belonging to such person, and, in the case of any other building or land, upon the said building or land and upon the movable property, if any, found within or upon such building or land and belonging to the person liable for such taxes.

Explanation - The term "property tax" in this section shall be deemed to include charges payable under section 134 for water supplied to any premises and the costs of recovery of property-taxes as specified in the rules.

(2) In any decree passed in a suit for the enforcement of the charge created by sub-section (1), the Court may order the payment to the Corporation of interest on the sum found to be due and such rate as the Court deems reasonable from the date of the institution of the suit until realization, and such interest and the cost of enforcing the said charge, including the costs of the suit and the cost of bringing the premises or moveable property in question to sale under the decree, shall, subject as aforesaid, be a fresh charge on such premises and moveable property thereof be made to the Corporation out of the sale proceeds.

141-A - Levy of interest on the sum due on account of property tax.

(1) If any person liable to pay property tax under this Chapter does not pay the property tax within the time prescribed for its payment under the rules made therefor, there shall be paid by such person for the period commencing on the date of the expiry of the aforesaid prescribed time and ending on the date of the payment of the amount of property tax, simple interest at the rate of eighteen per cent per annum on the amount of property tax not so paid or any less amount thereto remaining unpaid during such period :

Provided that where the property tax for an official year commencing on the first day of April, 1986 or for any official year thereafter in respect of premises used exclusively for residential purpose the rateable value of which does not exceed three hundred rupees is not paid before the end of the official year to which such tax relates but is paid thereafter, the interest shall be leviable for the period commencing on the date immediately after the expiry of the official year and ending on the date of the payment of the property tax.

(2) The interest levied under sub-section (1) may be recovered in the manner specified in section 128 for recovery of a municipal tax."

5. It is contended by the learned advocate for the respondent that in the alternate prayer the petitioner has made a prayer that a direction be issued to the respondent no. 1 Corporation not to sell the property mentioned in the petition not below upset price of Rs.51,50000/- in public auction and the remaining amount after deduction of the property tax must be paid to the petitioner towards its legal dues. In para 4 of the petitioner, the petitioner has stated that the petitioner is giving undertaking that the petitioner will try to get maximum amount possible in view of the upset price fixed by the recovery officer and will also pay the entire amount of the property tax due and payable to the respondent no. 1 Corporation from the amount recovered from public auction. The petitioner further states that the public money of the petitioner and the respondent no. 1 will be protected by this means.

6. I have carefully considered the submissions made by the learned counsel for the parties and perused the relevant papers on record. There are some dues on the

respondent no. 2. While on the other hand, the respondent no. 1 - Corporation has initiated proceedings for holding public auction of the property in dispute for recovery of the property tax as under the provisions of Section 141 of the Bombay Provincial Municipal Corporations Act, 1949, the respondent no. 1 has first charge in the premises for recovery of the property tax. As such, it does not appear any wrong or any error in the action taken by the respondent no. 1 Corporation for recovery of the property the tax by holding public auction. The petitioner has given an undertaking that the petitioner will pay the entire amount of the property tax due and payable to the respondent no. 1 Corporation from the amount recovered from the public auction.

7. In view of the above facts, I do not find any substance in the merit of the petition for quashing and setting the public auction to be held by the respondent no. 1 - Corporation for recovery of the property tax. However, as soon as the property is sold in public auction and the amount i.e. sale proceeds is received by the respondent no. 1 - Municipal Corporation, Rajkot after deducting the amount of the property tax together with interest thereon, rest of the amount will be paid to the petitioner Bank. If any amount remains after deducting the municipal taxes and Bank dues that should be paid to the owner of the property in dispute.

8. In view of the above, this petition is liable to be dismissed. Accordingly, this petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

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/JVSatwara/